

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRYAN ANGLE, II,
Plaintiff,

v.

SECRETARY LITTLE, et al.,
Defendants.

C.A. No. 22-1772 Pittsburgh

District Judge Susan Paradise Baxter
Chief Magistrate Judge Richard A. Lanzillo

MEMORANDUM ORDER

Plaintiff Bryan Angle, II, an individual previously in the custody of the Pennsylvania Department of Corrections ("DOC") at the State Correctional Institution at Fayette in LaBelle, Pennsylvania ("SCI-Fayette"),¹ initiated this civil rights action by filing a *pro se* complaint pursuant to 42 U.S.C. § 1983, in the Court of Common Pleas of Fayette County, Pennsylvania. The case was removed to this Court by Notice of Removal filed by Defendants on December 9, 2022 [ECF No. 1]. Named as Defendants are former DOC Secretary George Little and multiple staff members at SCI-Fayette. Plaintiff alleges that Defendants violated his "rights under the U.S. Constitution and Pennsylvania Constitution" by retaliating against him for his having filed injunction motions in two other open cases with this Court.

This matter was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. The case was subsequently assigned

¹ Plaintiff was released from incarceration at SCI-Fayette on or about April 11, 2023, and was moved to Fayette County Prison, from where he has since been released. No forwarding address for Plaintiff has been filed with the Court.

to the undersigned, as presiding judge, with Judge Lanzillo remaining as the referred Magistrate Judge for all pretrial proceedings.

On January 31, 2023, Defendants filed a partial motion to dismiss Plaintiff's complaint for failure to state a claim. [ECF No. 8]. Despite multiple extensions of time to do so, Plaintiff never filed a brief in opposition to the motion. [ECF Nos. 11, 22].

Nonetheless, in the interim, Plaintiff filed a "motion to intervene" [ECF No. 25] on May 8, 2023, seeking injunctive relief in the form of an order barring the DOC from destroying his property that had not yet been transferred from SCI-Fayette to the Fayette County Prison, and directing the DOC to return Plaintiff's property to him. Defendants filed a response to this motion [ECF No. 27] requesting that the Court deny the motion or, in the alternative, enter an order providing a reasonable time frame within which Plaintiff could provide instructions and payment for shipment of his property or identify an individual to whom SCI-Fayette may release the property.

On June 1, 2023, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R1") recommending that Plaintiff's motion to intervene [ECF No. 25] be denied because Plaintiff has failed to show either a likelihood of success on the merits or a probability of irreparable harm if the requested relief is not granted. [ECF No. 30]. Plaintiff filed timely objections to R&R1, in the form of a "response" [ECF No. 31] in which he merely amplifies his complaints and requests that the DOC be ordered to pay the shipping costs for the transport of his property to the Fayette County Prison, or to give his property to the Fayette County Sheriff to transport. As such, Plaintiff's "objections" to R&R1 fail to demonstrate error in Judge Lanzillo's recommendation or analysis.

Subsequently, on August 15, 2023, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R2") recommending that Defendants' partial motion to dismiss [ECF No. 8] be granted, and that Plaintiff's remaining claims be dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915A(b). [ECF No. 34]. However, R&R2 recommends further that all claims, other than Plaintiff's claims for injunctive relief that are now moot, be dismissed without prejudice to Plaintiff's right to file an amended complaint to restate such claims to correct the deficiencies cited in R&R2, within twenty (20) days. R&R2 was mailed to Plaintiff at both SCI-Fayette (which remains Plaintiff's address of record) and, as a courtesy, the Fayette County Prison (which is the address from which Plaintiff mailed his most recent filing with the Court). Both mailings have since been returned as undeliverable, with no forwarding address indicated. As a result, though objections to the R&R were due to be filed by September 1, 2023, no timely objections have been received by the Court.

Nonetheless, after *de novo* review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 6th day of September, 2023;

IT IS HEREBY ORDERED that Plaintiff's motion to intervene [ECF No. 25] is DENIED and that the report and recommendation of Chief Magistrate Judge Lanzillo, dated June 1, 2023 [ECF No. 30], is adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' partial motion to dismiss [ECF No. 8] is GRANTED, and all of Plaintiff's remaining claims are DISMISSED for failure to state a claim pursuant to 28 U.S.C. § 1915A(b). The dismissal of Plaintiff's claims, other than Plaintiff's claims for injunctive relief that are now moot, is without prejudice to Plaintiff's right to file an

amended complaint to correct the deficiencies noted in R&R2 within twenty (20) days of the date of this Order. In the event Plaintiff fails to file an appropriate amended complaint within such time, the Court's dismissal of all claims against Defendants will be converted to a dismissal with prejudice without further notice. The report and recommendation of Chief Magistrate Judge Lanzillo, issued August 15, 2023 [ECF No. 34], is adopted as the opinion of the court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief U.S. Magistrate Judge